

Federal Redistricting Law

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“[T]he political franchise of voting
. . . is regarded as a fundamental
political right, because [it is]
preservative of all rights....”

- *Yick Wo v. Hopkins* (1886)

Fourteenth Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the *equal protection of the laws*.

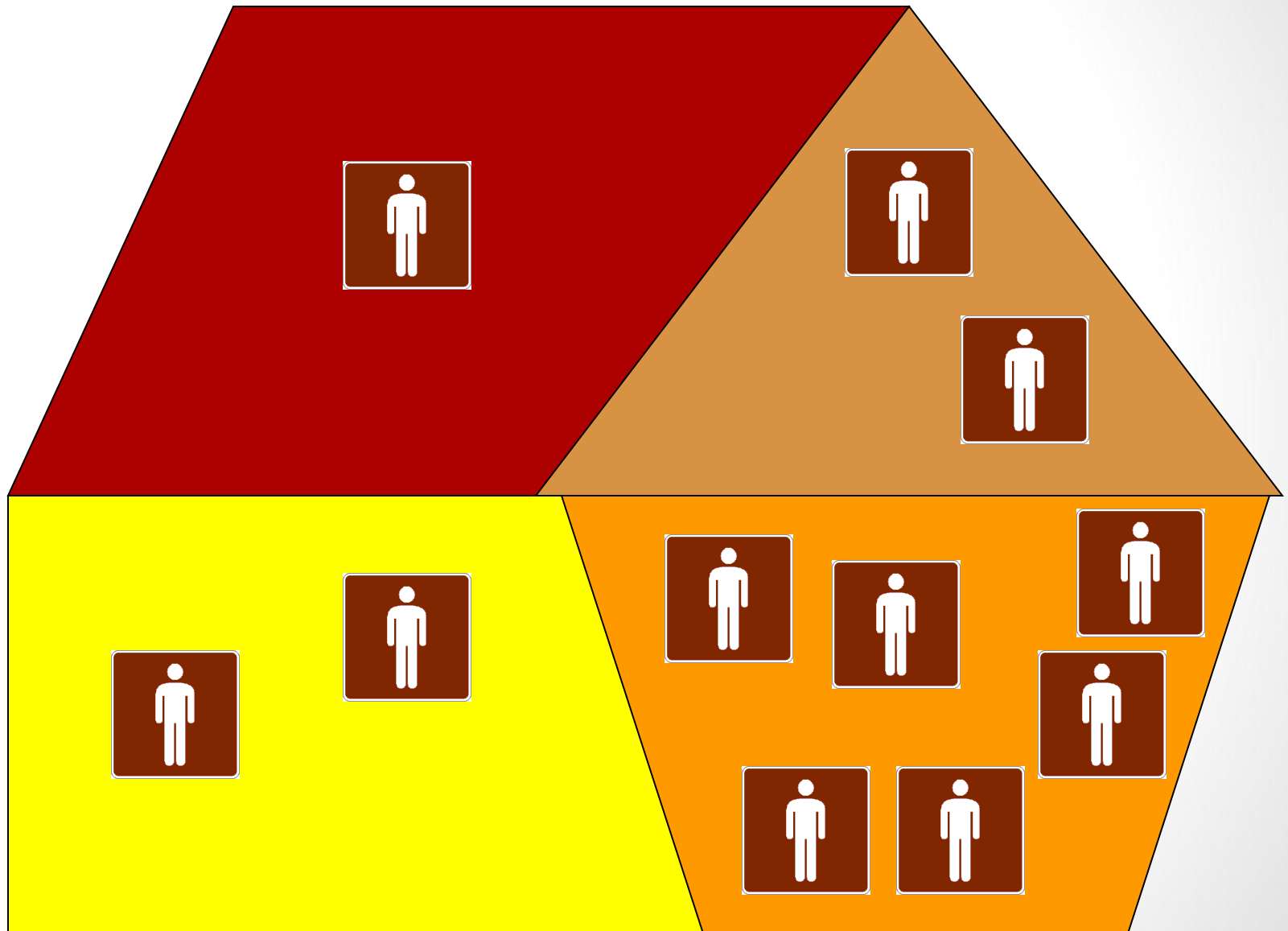
Redistricting

- One Person, One Vote
- Minority Vote Dilution
- Racial Gerrymandering
- Partisan Gerrymandering

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Malapportionment

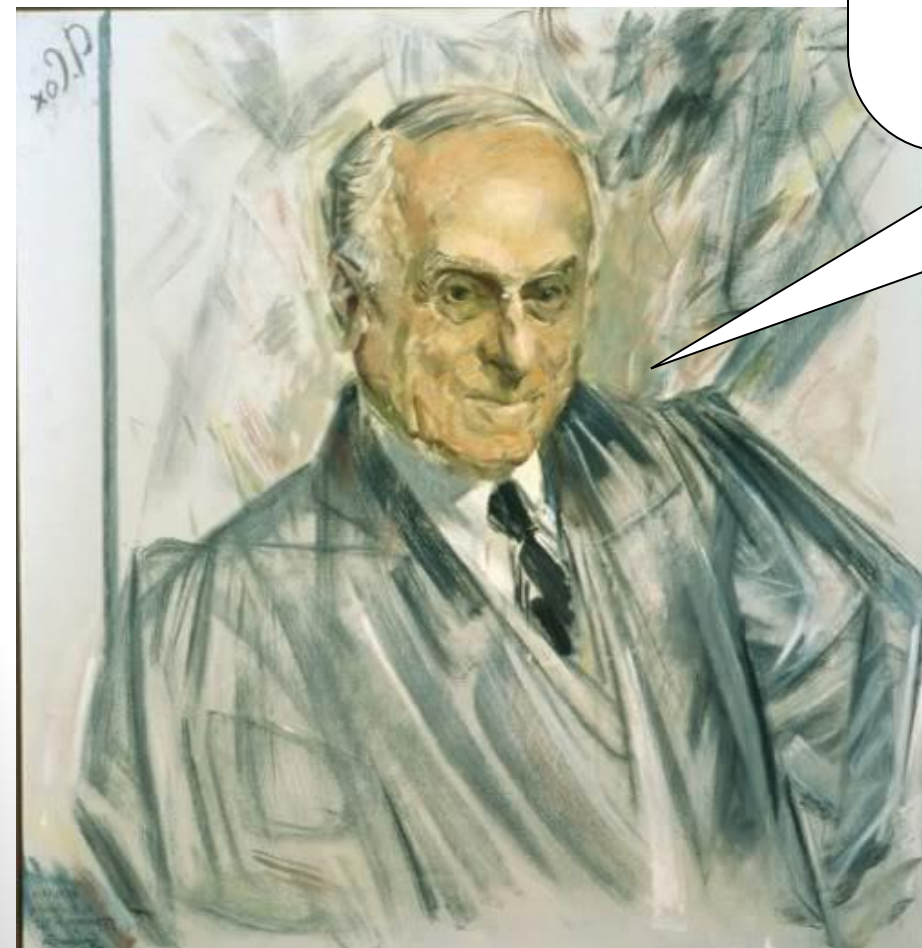


Colegrove v. Green

(1946)

Frankfurter, J., plurality

Courts ought not to enter this political thicket.
The remedy for unfairness in districting is to secure State legislatures that will apportion properly, or to invoke the ample powers of Congress.



Reynolds v. Sims

(1964)

- No reapportionment of AL between 1901 and 1964
- 25% of state population resided in districts with a majority in AL senate and house
- Population variances of 41 to 1 in AL senate and 16 to 1 in AL house



Reynolds v. Sims

(1964)



- Both houses of state legislature must be apportioned based on population, i.e. “one person, one vote”
- Later cases establish presumption that total deviations >10% in state legislative elections are problematic
- All states currently use total population to draw districts, upheld in *Evenwel v. Abbott* (2016).

Redistricting

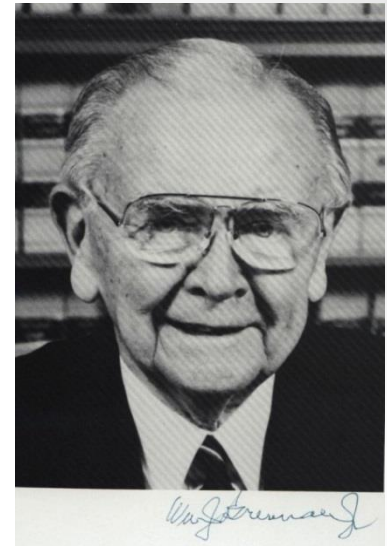
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Section 2 of the Voting Rights Act

- (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which **results in** a denial or abridgement of the right of any citizen of the United States to vote on account of race or color ... as provided in subsection (b) of this section.
- (b) A violation of subsection (a) of this section is established if, based on the **totality of circumstances**, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and *to elect representatives of their choice*.

Thornburgh v. Gingles

(1986)



Preconditions for vote dilution claim under Section 2 of the Voting Rights Act:

1. Minority group is *sufficiently large* and *geographically compact* to constitute a majority in a single-member district
2. Minority group is *politically cohesive*
3. White majority *votes as a bloc* so as to usually defeat minority-preferred candidates

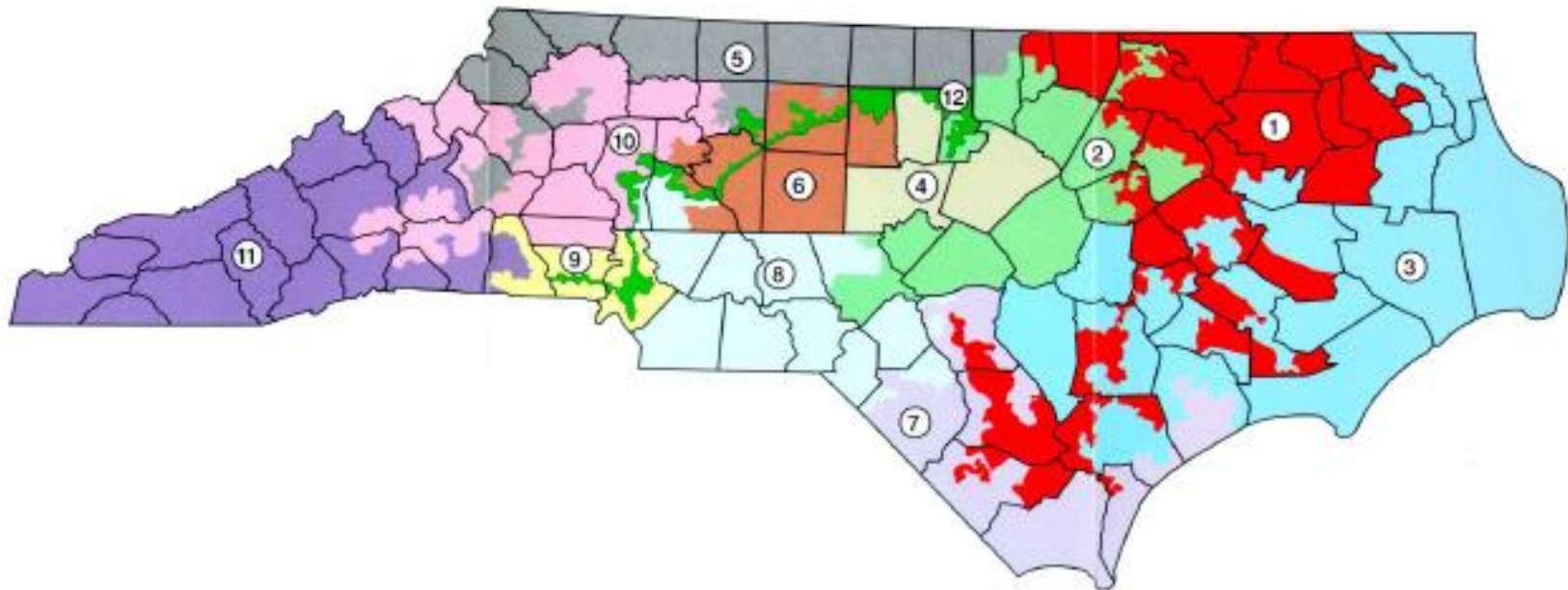
Section 2 of the VRA: “Senate Factors”

- (1) the extent of any history of **official discrimination** in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
- (2) the extent to which voting in the elections of the state or political subdivision is **racially polarized**;
- (3) the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other **voting practices or procedures that may enhance the opportunity for discrimination** against the minority group;
- (4) if there is a **candidate slating process**, whether the members of the minority group have been denied access to that process;
- (5) the extent to which members of the minority group in the state or political subdivision bear the **effects of discrimination** in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
- (6) whether political campaigns have been characterized by **overt or subtle racial appeals**;
- (7) the extent to which members of the minority group have been **elected to public office** in the jurisdiction;
- (8) whether there is a significant **lack of responsiveness** on the part of elected officials to the particularized needs of the members of the minority group;
- (9) whether the **policy underlying** the state or political subdivision’s use of such voting **qualification**, prerequisite to voting, or standard, practice or procedure is tenuous.

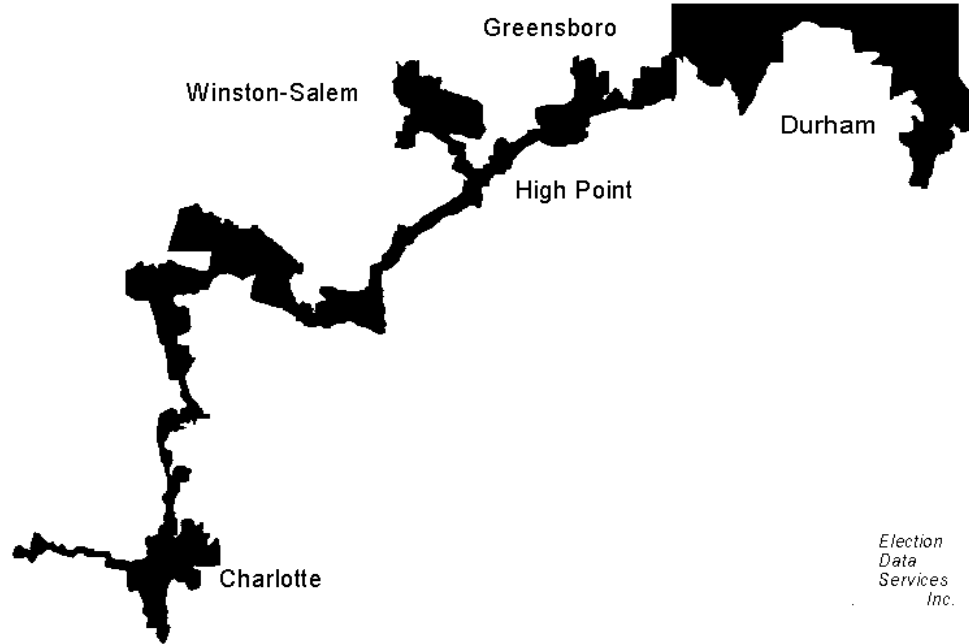
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APPENDIX
NORTH CAROLINA CONGRESSIONAL PLAN
Chapter 7 of the 1991 Session Laws (1991 Extra Session)



Racial Gerrymandering



- *Shaw v. Reno* (1993) created “analytically distinct” constitutional claim, to challenge excessive use of race in drawing districts.
- Subsequent cases clarify that race must be the “predominant factor” in drawing a district to violate Equal Protection Clause.
- Lots of successful cases in 1990s, virtually none in 2000s

Racial Gerrymandering: Recent & Ongoing Cases

- **Alabama:** SCOTUS allowed a challenge to the “packing” of black voters to proceed. *Ala. Leg. Black Caucus v. Alabama* (2015)
- **Virginia:** SCOTUS will consider a challenge to the “packing” of black voters into state legislative districts (>55%). *Bethune-Hill v. Vir. St. Bd. of Elec.*
- **North Carolina:** SCOTUS will consider a challenge to “packing” of black voters into congressional districts (>50%). *McCrory v. Harris*

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Partisan Gerrymandering

- **Problem:** One political party drawing district lines so as to maximize its own strength and minimize that of the other major party
- *Davis v. Bandemer* (1986): Majority finds case justiciable, plurality requires that plan “consistently degrade” a group’s influence.
- *Vieth v. Jubelirer* (2004): Plurality thinks case isn’t justiciable, swing justice (Kennedy) disagrees but doesn’t articulate a clear standard.
- *LULAC v. Perry* (2006): Majority finds case justiciable, again without articulating a clear standard.

Partisan Gerrymandering: Ongoing Cases

- **Maryland:** USDC denied motion to dismiss partisan gerrymandering claim under 1st Amdt. *Shapiro v. McManus*.
- **Wisconsin:** USDC is considering partisan gerrymandering claims under the 1st and 14th Amendments. *Whitford v. Nichol*.
- **North Carolina:** Partisan gerrymandering claims pending in appeal to SCOTUS and new case pending in USDC. *Harris v. McCrory, Common Cause v. Rucho*